

1 UNITED STATES DISTRICT COURT
2 WESTERN DISTRICT OF PENNSYLVANIA

3 INDECK KEYSTONE ENERGY LLC,

4 Plaintiff, Civil Action

5 vs.

No. 04-325 Erie

6 VICTORY ENERGY OPERATIONS,
7 LLC.

8 Defendant.

9 DEPOSITION OF ROBERT VEDDER SEIBEL
10 WEDNESDAY, OCTOBER 11, 2006

11 Deposition of ROBERT VEDDER SEIBEL, taken pursuant
12 to Notice and the Federal Rules of Civil Procedure, by and
13 before Cathy R. Mull, Notary Public in and for the
14 Commonwealth of Pennsylvania, at the offices of Schnader
15 Harrison Segal & Lewis LLP, Fifth Avenue Place, Suite
16 2700, 120 Fifth Avenue, Pittsburgh, Pennsylvania
17 15222-3001 commencing at 9:00 o'clock a.m., on the day and
18 date above set forth.

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<p>157</p> <p>1 was a legitimate design and we then proceeded to use three 2 inch tubes on four inch centers and that is the design 3 that would be used today.</p> <p>4 Q Do you remember which competitors were using three 5 inch tubes and four inch centers?</p> <p>6 A I brought with me from B and W the idea of three on 7 four. When we were up against the competition they were 8 using three on four clearly identified in their proposals, 9 clearly identified to us by the buyers.</p> <p>10 Q Section 4.1, the second sentence at the top of page 11 19 says, the boiler market will not support the extensive 12 development costs for new designs since profit margins 13 will not provide sufficient return on investment.</p> <p>14 Do you see that?</p> <p>15 A Yes.</p> <p>16 Q Did you do any modeling or analyze the economic 17 feasibility data before rendering this statement?</p> <p>18 A Not for the statement, but in the past I have done 19 that.</p> <p>20 Q When was the last time you did that?</p> <p>21 A Years ago.</p> <p>22 Q You're not saying, are you, that its absolutely 23 impossible for a new boiler manufacturer to come up with a</p>	<p>158</p> <p>1 new boiler design, are you?</p> <p>2 A No.</p> <p>3 Q You're just --</p> <p>4 A Nothing would stop somebody from doing that.</p> <p>5 Q You're just saying that it would be expensive; 6 correct?</p> <p>7 A There would be expense, yes.</p> <p>8 Q And that at least initially you're not going to 9 make a lot of money doing it because of the cost of 10 research and development; is that right?</p> <p>11 A Yeah, and it goes beyond -- yes. You're right.</p> <p>12 Yes.</p> <p>13 Q Would you agree that one of the ways that a boiler 14 manufacturer could design a boiler without having to start 15 from scratch, as you say, is to utilize existing 16 technology that's out there, that is being used by the 17 competitors?</p> <p>18 A Yes.</p> <p>19 Q Such as three inch tubes on four inch centers; 20 correct?</p> <p>21 A Correct.</p> <p>22 Q Section 4.3 on page 19 you say that, in order to 23 test a new design, it would be necessary to find a site</p>
<p>159</p> <p>1 where the boiler could be installed.</p> <p>2 Do you see that?</p> <p>3 A Yes.</p> <p>4 Q On what do you base this statement?</p> <p>5 A The fact that over the years we have -- we had 6 things that we would like to test and would take these to 7 places where they could, in fact, integrate the steam that 8 would be generated into their process and so that the 9 tested boiler would not be the primary source of steam, 10 but it could offset the steam required from the primary 11 source while it was being operated and so we would say, 12 well, we would like to do this and I don't know of a time 13 when we got an acceptable response to that.</p> <p>14 Q In the course of your working at Erie City Iron 15 Works, Zurn and Aalborg, was there ever an occasion where 16 a new boiler design was developed by Zurn and a boiler was 17 built without a prototype?</p> <p>18 A Not with -- starting with a -- how should I put 19 this?</p> <p>20 What I'm struggling with is that for the Keystone 21 steam generator there have been very many applications 22 that were very unique in their design -- in their way of 23 looking at it.</p>	<p>160</p> <p>1 For example, there were six Keystone boilers sold 2 for the oil field -- oil field, enhanced oil recovery, and 3 the boilers were to operate at two pounds pressure and at 4 less than stoichiometric combustion air flow because the 5 buyer, who happened to be Exxon, came up with a technique 6 where they would cleanup the gas leaving only nitrogen 7 from the boiler and then the nitrogen would be pumped down 8 oil wells to enhance the oil recovery.</p> <p>9 There were tremendously different features on those 10 boilers than what the standard Keystone boiler would have 11 been. They were not tested before they were installed.</p> <p>12 We have a -- we designed and built and furnished a 13 Keystone -- field erected Keystone steam generator for -- 14 let's see, acid pickling process, waste liquor 15 incineration and there was no prior testing to that.</p> <p>16 We designed, fabricated and built a Keystone boiler 17 for 2,000 pounds design pressure. Operating at 1,800 18 pounds, we didn't do a design prototype for that.</p> <p>19 So, while there are many cases that we could go 20 through and say, gee, there's substantial difference from 21 the standard design, where there's a considerable amount 22 of engineering had to be done on that design, they were 23 not prototype tested.</p>

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1 Q Do you know whether or not Babcock and Wilcox field
2 tested every new design before selling a product?
3 A No, they didn't, but Babcock and Wilcox has
4 probably the one case that I know of in history where the
5 customer returned a boiler. It didn't work.
6 Q How about Combustion Engineering, do you know
7 whether or not Combustion Engineering field tested every
8 new design before selling a product?
9 A I don't know.
10 Q Do you know whether or not Nebraska Boiler field
11 tested every new design before selling a product?
12 A I don't know.
13 Q Section 4.4 reverse engineering, you say that
14 inspecting an existing boiler, finding its physical
15 dimensions and features and observing its operation in
16 most cases would not be sufficient for a boiler buyer to
17 commit to a new, untested design.
18 Do you see that?
19 A Uh-huh.
20 Q Yes? You have to answer in words.
21 A Yes.
22 Q Did you conduct any customer studies or inquiries
23 to support that statement?

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1 which we thought was pretty good and we gave several
2 presentations to possible customers with that and even
3 though there was some consideration in regard to covering
4 the cost through the government, resources of research and
5 development, that we could not find a buyer who would go
6 with that.
7 Q You told me earlier today that you heard of a
8 company called RenTech; is that correct?
9 A Yes, I did. I know Jack Rense.
10 Q You know Jack Rense?
11 A Yes.
12 Q You knew him when he was with ABCO?
13 A Yes.
14 Q He started his own company; correct?
15 A Yes.
16 Q He started his own line of boilers; correct?
17 A Yes.
18 Q He has been pretty successful in selling those
19 boilers, hasn't he?
20 MR. WILLIAMS: Objection foundation.
21 BY MR. SHEAN:
22 Q Do you know whether or not RenTec has been
23 successful in selling package boilers?

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1 A Yes, personal experience. We had the latest and
2 greatest oil field steam generator and I personally was
3 involved in the design, made up the sales brochure, that
4 sort of thing, and took that out into the field and we got
5 no acceptance of that.
6 So, we have the experience of having made a design
7 that was not acceptable to the customer and we abandoned
8 the project.
9 Q Do you believe that your experience in marketing an
10 oil fired boiler is directly relevant to what would happen
11 to a water tube package boiler manufacturer if they tried
12 to roll out a new design?
13 A Pretty much.
14 Q Why is that?
15 A People said to us when we took this design, the
16 latest and greatest design to them to consider, they said,
17 well, we have seen a thousand of you people that have the
18 latest, greatest and the answer to all our problems. We
19 don't agree to that. We'll continue to do what we're
20 doing with our proven designs and we saw that.
21 We also -- I mentioned that I was involved with the
22 industrial boiler study for Westinghouse Electric on
23 fluidized bed combustion. We had a design of a boiler

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1 A I have heard that they have.
2 Q When did Nebraska boiler first begin selling
3 package boilers?
4 A I really don't know. My involvement with ABMA
5 under -- Jack Scully who was one of the principals on that
6 boiler.
7 Q When was that?
8 A I was with ABMA in the '80s, I guess.
9 Q Do you know whether or not Nebraska Boiler has been
10 fairly successful in selling O style water tube package
11 boilers?
12 A I don't know. I do not know that.
13 Q Have you reviewed any ABMA data relative to boiler
14 sales over the past four years?
15 A I have not.
16 Q Do you believe Nebraska Boiler has developed a
17 successful design for its O style water tube package
18 boiler?
19 A If they continue to sell them, I guess you would
20 have to say it was successful.
21 Q Do you know how long Nebraska Boiler has been
22 selling O style water tube package boilers?
23 A I don't know.